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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

In Re:)	BANKRUPTCY NO. 10-13100
)	
KRISTINE D. VON HURST aka KRISTINE)	)	CHAPTER 7
D. HAYES aka KRISTINE D. JOHNSON,)	
	)	R.S. No. RSL-1
Debtor.)	
)	
BANK OF AMERICA, N.A.	)	MOTION FOR RELIEF FROM
	)	AUTOMATIC STAY (PERSONAL
MOVANT	)	PROPERTY)
	)	(11 U.S.C. § 362 and
v.	)	Bankruptcy Rule 4001)
)	
KRISTINE D. VON HURST aka KRISTINE))	
D. HAYES aka KRISTINE D. JOHNSON,	)	DATE: June 22, 2010
and ROBERT A. HAWKINS, Chapter 7)	)	TIME: 1:30 p.m.
Trustee.	)	CTRM: 11, 5 th Floor
	)	DEPT: "A"
Respondents.)	
)	

TO THE RESPONDENTS KRISTINE D. VON HURST., HER ATTORNEY
OF RECORD AND THE TRUSTEE:

Bank of America, N.A., its successors and/or assigns
(Movant), respectfully represents as follows:

RELIEF FROM STAY

BACKGROUND FACTS

1. This Court has jurisdiction over the subject matter of

1 this Motion pursuant to the provisions of 28 United States Code
2 sections 157, and 11 United states Code section 362.

3 2. On or about March 15, 2010, Debtor filed a voluntary
4 petition under Chapter 7 of the Bankruptcy Code. Robert A. Hawkins
5 is the appointed Chapter 7 Trustee.

6 3. On or about July 4, 2007, Debtor entered into a "Retail
7 Installment Sale Contract" (hereinafter "Agreement") with Bank of
8 America, N.A., wherein Debtor purchased certain personal property
9 to wit, a 2007 Toyota FJ Cruiser, Vehicle Identification Number
10 JTEBU11F770088752, as described in the Agreement attached hereto as
11 Exhibit "A" to the Declaration is support of the within motion.
12 Pursuant to the said Agreement, Debtor is obligated to make monthly
13 payments of \$538.48, with a late payment of 5% of the said payment
14 (\$26.92), if any payment is ten (10) or more days past due.

15 4. Movant has not received the payments owing for September
16 18, 2009 through May 18, 2010, inclusive. Another payment will
17 become due on June 18, 2010. Accordingly, the arrears owing under
18 the Agreement are in the approximate sum of \$4,846.32, and
19 attorneys' fees and costs incurred in filing the instant Motion
20 (\$550.00).

21 5. As of May 25, 2010, the outstanding balance due by
22 Debtor to Movant is \$27,747.89, as set forth in the attached
23 Declaration of Sheldon Cuthrell.

24 6. The subject vehicle is currently in the possession of
25 Movant herein pursuant to a voluntary surrender by Debtor herein.

26 RELIEF FROM STAY

27 LACK OF EQUITY

28 7. Movant is informed and believes that, based upon

Debtor's Schedule B, the value of the vehicle is approximately \$22,000.00. A true and correct copy of the relevant portion of Debtor's Schedule B is attached to the Declaration in Support of Motion for Relief From the Automatic Stay as Exhibit "C" and incorporated herein by reference. The subject vehicle is decreasing in value due to aging.

8. Further, inasmuch as Debtor is unable to service the debt on the subject vehicle, and has voluntarily surrendered same, Movant contends that same is not necessary for an effective reorganization. Therefore, Movant is entitled to relief from stay under 11 United States Code section 362(d)(2).

9. If Movant is not allowed to repossess and sell the subject vehicle it will suffer irreparable injury, loss and damage.

RELIEF FROM STAY - CAUSE

ADEQUATE PROTECTION

10. Pursuant to the provisions of 11 United States Code Section 361 and 362(d), Movant is entitled to adequate protection of its interest in personal property.

11. Movant submits the adequate protection in this case requires normal and periodic cash payments, as called for by the Agreement, plus the repayment of any and all delinquent amounts owed to Movant, including all attorneys' fees and costs incurred in the filing of this Motion.

12. Movant is informed and believes that Debtor is presently unwilling or unable to provide adequate protection to the Movant and there is no probability that adequate protection can be afforded to Movant within a reasonable time.

13. By reason of the foregoing, Movant is entitled to

1 relief from stay under 11 United States Code section 362(d)(1),
2 based upon the failure of Debtor to provide adequate protection to
3 Movant and to make payments as required by 11 United States Code
4 section 1322.

5 WHEREFORE, Movant respectfully prays for an Order of this
6 Court as follows:

7 1. Terminating the automatic stay of 11 United States
8 Code section 362, as it applies to the enforcement by Movant of all
9 of its rights in the Personal Property under the Agreement;

10 2. That the 10-day stay set forth in Bankruptcy Rule
11 4001(a)(3) be waived;

12 3. Granting Movant relief from the automatic stay
13 allowing Movant (and any successors or assigns) to proceed under
14 applicable non-bankruptcy law to enforce its remedies to repossess
15 and sell the subject personal property;

16 4. Alternatively, in the event this court declines to
17 grant Movant the relief requested above, Movant requests that an
18 Order for adequate protection be issued, requiring the Debtor to
19 reinstate and maintain in a current condition all obligations due
20 under the Agreement, including Debtor's obligations to pay when due
21 (a) the monthly installments as required under the Agreement; (b)
22 insurance obligations; and (c) any sums advanced by Movant on
23 behalf of Debtor in order to protect Movant's interest in the
24 Property, including all attorneys' fees and costs incurred in the
25 filing of this motion;

26 5. That the attorneys's fees and costs incurred by
27 Movant for filing the instant Motion be included in the outstanding
28 balance of the Agreement as allowed under applicable non-bankruptcy

1 law; and;

2 6. For such other and further relief as the Court deems
3 just and property.
4

5 Dated: May 24, 2010

LAW OFFICE OF ROBERT S. LAMPL

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7 By: /s/ Robert S. Lampl
8 ROBERT S. LAMPL,
9 Attorney for Movant
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